

ASSEMBLY BILL

No. 491

Introduced by Assembly Member Keeley

February 24, 1997

An act to amend Section 12035 of, and to add Section 12036 to, the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 491, as introduced, Keeley. Firearms: criminal storage.

(1) Existing law establishes the crime of criminal storage which arises when a person keeps any loaded firearm within any premises that is under his or her custody or control and he or she knows or reasonably should know that a child under 14 years of age is likely to gain access to the firearm without the permission of the child's parent or legal guardian and the child obtains access to the firearm and thereby either (a) causes death or great bodily injury to himself, herself, or any other person, or (b) causes injury, other than great bodily injury, to himself, herself, or any other person, or exhibits the firearm either in a public place or as specified. A violation of (a) is criminal storage in the 1st degree, punishable as either a misdemeanor or a felony, and a violation of (b) is criminal storage in the 2nd degree, punishable as a misdemeanor.

This bill instead would apply these provisions to a child under 18 years of age. The bill also would provide that a person who keeps a pistol, revolver, or other firearm capable of being concealed upon the person within any premise that is under his or her custody or control and he or she knows or reasonably should know that a child under the age of 18 years is likely to

gain access to that firearm without the permission of the child's parent or legal guardian and the child obtains access to that firearm and carries it off-premises or injures or kills a person on the premises where access to the firearm was gained, is guilty of a misdemeanor. This provision would not apply if the child obtains the firearm as a result of an illegal entry into any premises by any person, the firearm is kept in a locked container, the firearm is equipped with a locking device, or the child uses the firearm to commit an offense that results in him or her being found an unfit subject for juvenile court law and thereby subject to prosecution in an adult court of criminal jurisdiction. Because this bill would create a new crime, it would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12035 of the Penal Code is
2 amended to read:
3 12035. (a) As used in this section, the following
4 definitions shall apply:
5 (1) "Locking device" means a device which
6 temporarily prevents the firearm from functioning.
7 (2) "Loaded firearm" has the same meaning as set
8 forth in subdivision (g) of Section 12031.
9 (3) "Child" means a person under ~~14~~ 18 years of age.
10 (4) "Great bodily injury" has the same meaning as set
11 forth in Section 12022.7.
12 (5) "Locked container" has the same meaning as set
13 forth in subdivision (d) of Section 12026.2.
14 (b) (1) Except as provided in subdivision (c), a
15 person commits the crime of "criminal storage of a
16 firearm of the first degree" if he or she keeps any loaded



1 firearm within any premise which is under his or her
2 custody or control and he or she knows or reasonably
3 should know that a child is likely to gain access to the
4 firearm without the permission of the child's parent or
5 legal guardian and the child obtains access to the firearm
6 and thereby causes death or great bodily injury to himself,
7 herself, or any other person.

8 (2) Except as provided in subdivision (c), a person
9 commits the crime of "criminal storage of a firearm of the
10 second degree" if he or she keeps any loaded firearm
11 within any premise which is under his or her custody or
12 control and he or she knows or reasonably should know
13 that a child is likely to gain access to the firearm without
14 the permission of the child's parent or legal guardian and
15 the child obtains access to the firearm and thereby causes
16 injury, other than great bodily injury, to himself, herself,
17 or any other person, or exhibits the firearm either in a
18 public place or in violation of Section 417.

19 (c) Subdivision (b) shall not apply whenever any of
20 the following occurs:

21 (1) The child obtains the firearm as a result of an illegal
22 entry to any premises by any person.

23 (2) The firearm is kept in a locked container or in a
24 location which a reasonable person would believe to be
25 secure.

26 (3) The firearm is carried on the person or within such
27 a close proximity thereto so that the individual can readily
28 retrieve and use the firearm as if carried on the person.

29 (4) The firearm is equipped with a locking device.

30 (5) The person is a peace officer or a member of the
31 armed forces or national guard and the child obtains the
32 firearm during, or incidental to, the performance of the
33 person's duties.

34 (6) The child obtains, or obtains and discharges, the
35 firearm in a lawful act of self-defense or defense of
36 another person, or persons.

37 (7) The person who keeps a loaded firearm on any
38 premise which is under his or her custody or control has
39 no reasonable expectation, based on objective facts and

1 circumstances, that a child is likely to be present on the
2 premise.

3 (8) *The child uses the firearm to commit an offense*
4 *that results in a finding by the juvenile court that the child*
5 *is an unfit subject to be dealt with under the juvenile*
6 *court law and thereby subject to prosecution in an adult*
7 *court of criminal jurisdiction pursuant to Section 707 of*
8 *the Welfare and Institutions Code.*

9 (d) Criminal storage of a firearm is punishable as
10 follows:

11 (1) Criminal storage of a firearm in the first degree, by
12 imprisonment in the state prison for 16 months, or 2 or 3
13 years, by a fine not exceeding ten thousand dollars
14 (\$10,000), or by both that imprisonment and fine; or by
15 imprisonment in a county jail not exceeding one year, by
16 a fine not exceeding one thousand dollars (\$1,000), or by
17 both that imprisonment and fine.

18 (2) Criminal storage of a firearm in the second degree,
19 by imprisonment in a county jail not exceeding one year,
20 by a fine not exceeding one thousand dollars (\$1,000), or
21 by both that imprisonment and fine.

22 (e) If the person who allegedly violated this section is
23 the parent or guardian of a child who is injured or who
24 dies as the result of an accidental shooting, the district
25 attorney shall consider, among other factors, the impact
26 of the injury or death on the person alleged to have
27 violated this section when deciding whether to prosecute
28 an alleged violation. It is the Legislature's intent that a
29 parent or guardian of a child who is injured or who dies
30 as the result of an accidental shooting shall be prosecuted
31 only in those instances in which the parent or guardian
32 behaved in a grossly negligent manner or where similarly
33 egregious circumstances exist. This subdivision shall not
34 otherwise restrict, in any manner, the factors that a
35 district attorney may consider when deciding whether to
36 prosecute alleged violations of this section.

37 (f) If the person who allegedly violated this section is
38 the parent or guardian of a child who is injured or who
39 dies as the result of an accidental shooting, no arrest of the
40 person for the alleged violation of this section shall occur



1 until at least seven days after the date upon which the
2 accidental shooting occurred.

3 In addition to the limitation contained in this
4 subdivision, a law enforcement officer shall consider the
5 health status of a child who suffers great bodily injury as
6 the result of an accidental shooting prior to arresting a
7 person for a violation of this section, if the person to be
8 arrested is the parent or guardian of the injured child.
9 The intent of this subdivision is to encourage law
10 enforcement officials to delay the arrest of a parent or
11 guardian of a seriously injured child while the child
12 remains on life-support equipment or is in a similarly
13 critical medical condition.

14 (g) (1) The fact that the person who allegedly
15 violated this section attended a firearm safety training
16 course prior to the purchase of the firearm that is
17 obtained by a child in violation of this section shall be
18 considered a mitigating factor by a district attorney when
19 he or she is deciding whether to prosecute the alleged
20 violation.

21 (2) In any action or trial commenced under this
22 section, the fact that the person who allegedly violated
23 this section attended a firearm safety training course
24 prior to the purchase of the firearm that is obtained by a
25 child in violation of this section, shall be admissible.

26 SEC. 2. Section 12036 is added to the Penal Code, to
27 read:

28 12036. (a) As used in this section, the following
29 definitions shall apply:

30 (1) "Locking device" means a device that temporarily
31 prevents the firearm from functioning.

32 (2) "Child" means a person under the age of 18 years.

33 (3) "Off-premises" means premises other than the
34 premises where the firearm was stored.

35 (4) "Locked container" has the same meaning as set
36 forth in subdivision (d) of Section 12026.2.

37 (b) A person who keeps a pistol, revolver, or other
38 firearm capable of being concealed upon the person,
39 loaded or unloaded, within any premise that is under his
40 or her custody or control and he or she knows or

1 reasonably should know that a child is likely to gain access
2 to that firearm without the permission of the child's
3 parent or legal guardian and the child obtains access to
4 that firearm and thereafter carries that firearm
5 off-premises, shall be punished by imprisonment in a
6 county jail not exceeding one year, by a fine not
7 exceeding one thousand dollars (\$1,000), or by both that
8 imprisonment and fine.

9 (c) A pistol, revolver, or other firearm capable of
10 being concealed upon the person that a child gains access
11 to and carries off-premises in violation of this section shall
12 be deemed "used in the commission of any misdemeanor
13 as provided in this code or any felony" for the purpose of
14 subdivision (b) of Section 12028 regarding the authority
15 to confiscate firearms and other deadly weapons as a
16 nuisance.

17 (d) This section shall not apply if any one of the
18 following circumstances exists:

19 (1) The child obtains the pistol, revolver, or other
20 firearm capable of being concealed upon the person as a
21 result of an illegal entry into any premises by any person.

22 (2) The pistol, revolver, or other firearm capable of
23 being concealed upon the person is kept in a locked
24 container.

25 (3) The pistol, revolver, or other firearm capable of
26 being concealed upon the person is equipped with a
27 locking device.

28 (4) The child uses the firearm to commit an offense
29 that results in a finding by the juvenile court that the child
30 is an unfit subject to be dealt with under the juvenile
31 court law and thereby subject to prosecution in an adult
32 court of criminal jurisdiction pursuant to Section 707 of
33 the Welfare and Institutions Code.

34 SEC. 3. No reimbursement is required by this act
35 pursuant to Section 6 of Article XIII B of the California
36 Constitution because the only costs that may be incurred
37 by a local agency or school district will be incurred
38 because this act creates a new crime or infraction,
39 eliminates a crime or infraction, or changes the penalty
40 for a crime or infraction, within the meaning of Section



1 17556 of the Government Code, or changes the definition
2 of a crime within the meaning of Section 6 of Article
3 XIII B of the California Constitution.

4 Notwithstanding Section 17580 of the Government
5 Code, unless otherwise specified, the provisions of this act
6 shall become operative on the same date that the act
7 takes effect pursuant to the California Constitution.

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